



# CALIFORNIA STATE BOARD OF EDUCATION

## SEPTEMBER 2004 AGENDA

### ☒ General Waiver

#### SUBJECT

Request by **San Jose Unified School District** to waive portions of Education Code (EC) sections 17465, 17466, 17469, 17471, 17472, 17473 and 17475, specific provisions for Sale/Lease of Surplus Property. Approval of the waiver would speed the process faster than required by statute, emphasize the proposed usage for the property in the selection, rather than "highest bid", and eliminate the "oral bid" process. The three district properties for which the waiver is requested are the **former Hammer School site**, the **former Erikson school site** and the **former Crossroads Community Day school site**.

Waiver Number: 1-6-2004

☒ Action

☐ Consent

#### RECOMMENDATION

☐ Approval ☒ Approval with conditions ☐ Denial

The district shall be granted the waiver for disposition of the three sites listed only on the condition that the district will:

- 1) enforce a shorter time line of 30 days rather than the statutory 60 days for purposes of the notice requirements in EC 17465 (c), (d)(2), (e) and (g).
- 2) enforce a shorter time line of two weeks rather than three for the public meeting to open the sealed bids, and to allow the resolution describing the property or sale or lease to be based on specific terms described by the local board, rather than a minimum price or rental fee as described in EC 17466;
- 3) enforce a shorter time line of public notice to 10 days (formerly 15 days) and two weeks (formerly 3 weeks) for newspaper notice in EC 17469;
- 4) be allowed to forgo the public notice requirements when leasing property for less than \$3,000 a month (formerly \$50 a month limit in EC 17471);
- 5) evaluate bids between normal board meetings (14 days) rather than the statutory 10 days required by EC 17475, so special meetings do not have to be called for final decisions on sales/leases and due diligence in regard to the offers may be completed;
- 6) be granted the waiver to apply to the sale or lease of three properties only (named above), for two years less one day, so that EC 33051(c) will not apply.

#### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The State Board of Education approved a sale and lease waiver for the Mill Valley School District in July 2003, and for the Huntington Beach Union High School District in January 2003.

In February, 2003, Greg Geeting, then on State Board staff, analyzed the entire

section of the code, recommending the specific portions of these EC that may be considered for waiver, and listing those that probably do not need to be waived. After considering this analysis in some detail, the request was modified as follows. See Attachment A, the actual EC language to be waived.

## **SUMMARY OF KEY ISSUES**

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Under the provisions of *Education Code* sections 33050-33053, the San Jose Unified School District requests that specific portions of the *Education Code* sections relating to the sale and disposition of district property be waived in order to maximize community support by involving them in the assessing the best tenant for the property and allow the district and the community flexibility to consider community service, and not just revenue, as criteria for bid selection. In all cases bidding would remain competitive and open to the public.

The District wishes to accelerate the process for accepting bids on district property in order to maximize flexibility to negotiate contracts in an ever-softening real estate market and in order to complete negotiations quickly so as to minimize disruptions associated with rearranging facility usage during the school year. This can be done through new time lines being set by conditions in waiver of EC's 17465 (c), (d)(2), (e) and (g); 17466; and 17469.

The district also requests a partial waiver of EC 17466, the language "the board shall specify ~~the minimum price or rental and the~~ terms upon which it will be sold or leased." This waiver will allow the district to have the discretion of not having to set a minimum bid based on the character of the property being leased. In a variable market such as in San Jose, setting a minimum rental can lead to bids that are lower than the market would generate without a minimum price, as bids are targeted around the district's minimum. Or conversely, the district has experienced setting a minimum bid, then getting no bidders at all, and then be required to start the entire public process over again, with additional costs, time delays and loss of income from the vacant property.

The limit set in statute with SB1562, in **1977-78** allows districts forgo the public notice requirements when leasing property for **less than \$50/month**; is very outdated! By allowing a waiver of that \$50 limit, on the condition that the new limit be set at \$3,000/month, the district can expedite the leasing of very small areas within a school site. For example, when an entire site is leased, except of one or two classrooms or modular buildings, those could be leased without the time-consuming and costly process of taking public bids, if the ceiling were lifted to **\$3,000/mo.**

If EC 17473 and a portion of EC 17472 is waived, oral bids will not be accepted by San Jose on these properties. This last-minute bidding method can negate the thoughtful, written bids previously submitted and cause further delay. The district has experienced problems where the oral bidding raised the price to such a level that the tenant was later unable to make the payments. This resulted in an attempt to renegotiate the lease, and if there had been a default, might have required tenant

eviction, and the whole public notice process would have to be started again.

Under the restrictions of 33050(a)(7), this waiver will NOT apply to large areas of the EC in Part 10.5, keeping all other public protections in place.

The department recommends approval of the waiver as stated for the three named sites, with conditions as listed.

**Authority for Waiver:** *Education Code* (EC) Section 33050

**Period of request:** September 9, 2004 through September 8, 2006  
(EC 33051 (c) will not apply)

**Local board approval date(s):** May 20, 2004 Public

**Public hearing held on date(s):** May 10, 2004

**Bargaining unit(s) consulted on date(s):** May 6, 2004

**Name of bargaining unit/representative(s) consulted:** CSEA- Robin Hill, Diana Bernal; AFSCME - Roberta Lopez, Joseph De La Fuente; Trades - Phil San Filippo

**Position of bargaining unit(s) (choose only one):**

☐ Neutral ☒ Support ☐ Oppose

Comments (if appropriate):

**Public hearing advertised by (choose one or more):**

☒ posting in a newspaper ☐ posting at each school ☐ other (specify)

**Advisory committee(s) consulted:** District 7-1 1 Advisory Committee

**Objections raised (choose one):** ☒ None ☐ Objections are as follows:

**Date(s) consulted:** April 26, 2004

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### **FISCAL ANALYSIS (AS APPROPRIATE)**

The flexibility in property disposition requested herein will allow the district to maximize revenue flow as it adjusts to the exigencies of declining enrollment.

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### **BACKGROUND INFORMATION**

Action Item: Some documentation is available for web viewing. Waiver forms and other hard copy documents are available for viewing at the Waiver Office or State Board Office.

**Attachment A: Education Codes to be Waived and proposed conditions (in bold)**

Section 17465 (c). Upon adoption of the resolution, the governing board shall notify, in writing, other districts or the county office, as specified in subdivision (b), of its intent to lease vacant classrooms. The notice shall describe the vacant classrooms, shall specify that the lease shall not exceed 99 years and that the lease payment and other terms of the lease are subject to negotiation, and shall state that the offer to lease is valid for no more than ~~60~~ **(30)** days after receipt thereof.

Section 17465 (d)(2). Expiration of the ~~60-day~~ **(30-day)** period prescribed by subdivision (c).

Section 17465 (e). An entity desiring to lease the vacant classroom shall, within ~~60~~ **(30)** days from receipt of the notification, inform the governing board, in writing, of its intent to lease or not to lease the classroom.

Section 17465 (g). If the governing board and the entity desiring to lease the classroom are unable to complete negotiations for the lease and arrive at a mutually satisfactory lease within the same ~~60-day~~ **(30-day)** period that the entity has to inform the governing board of its intent to lease or not lease, the governing board may lease the classroom in accordance with the provisions of this article.

Section 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it and shall specify the ~~minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental.~~ The resolution shall fix a time not less than ~~three~~ **(two)** weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.

Section 17469. Notice of the adoption of the resolution and of the time and place of holding the meeting shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district, not less than ~~45~~ **(10)** days before the date of the meeting, and by publishing the notice not less than once a week for ~~three~~ **two** successive weeks before the meeting in a newspaper of general circulation published in the county in which the district or any part of the district is situated, if any such newspaper is published therein.

Section 17471. Whenever it is proposed to lease real property and the governing board unanimously determines in the resolution that in its opinion, the monthly rental value of the property does not exceed the sum of ~~fifty dollars (\$50).~~ **(two thousand dollars (\$3,000)).** the resolution need not be posted and may, before the date of the meeting, be published in two successive issues of a weekly newspaper or in five successive issues of a daily newspaper. The newspaper in which the notice is published shall be....

Section 17472. At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in a public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting there from the commission, if any, to be paid to a licensed real estate broker in connection therewith, shall be finally accepted, unless ~~a higher oral bid is accepted or~~ the board rejects all bids.

~~Section 17473. Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.~~

Section 17475. The final acceptance by the governing body may be made either at the same session or at any adjourned session of the same meeting held within the ~~10~~ **(14)** days next following.